IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO.36 OF 1995

Bajirao Gondappa Chaugule
age about 27 years, Resident of
Siye, Taluka Karvir,
District- Kolhapur. .. Appellant
(Org.Accused No.1)

Vs.

The State of Maharashtra .. Respondent

Mr. Niranjan Mundargi h/f Mr. A.P. Mundargi for appellant.
Mr. A.M. Shringarpure, APP for Respondent-State.

CORAM: S.S. PARKAR & ANOOP V. MOHTA, JJ.

Date : February 11, 2005.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal is filed by the convicted accused challenging the order of his conviction for offence under Section 302 of IPC and sentence of life imprisonment imposed on him by the Addl. Sessions Judge, Ratnagiri by the impugned judgment and order dated 5/12/1994 in Sessions Case No.89 of 1991.

2. Briefly narrated the facts of the case are as under:-

. The incident had taken place on the night of

29/5/1991 at Ram-road, a place situate on the road between Ganpatipule and Ratnagiri. On that night murder of one Tanaji Ladgaonkar, the husband of P.W.1 Mangal, was committed and his body was found with multiple injuries lying on the side of the road. In the trial court three accused were tried for the said offence, the appellant, as accused no.1 and his brother Manohar, as accused no.3. Accused No.2 is one Namdeo Bapu Ladgaonkar. All the accused persons were residents of village Siye, Taluka Karveer, District Kolhapur. Appellant Bajirao and accused no.2 Namdeo were residing in the vicinity of deceased Tanaji in the same village. Accused no.2 Namdeo who was acquitted is cousin of deceased Tanaji. The wives of appellant Bajirao and deceased Tanaji are cousins. On 28/5/1991 deceased Tanaji and the appellant had been to the house of parents of Tanaji's wife, where Mangal had gone in order to attend the marriage in that village of the son of one Bapu Padval. Mangal was told by Bajirao, Tanaji and Bajirao's wife Bharati that they had decided to go to Ganpatipule to have Deodarshan and, therefore, they wanted to take Mangal with them. They left Padvalwadi at about 9 a.m. and reached Ganpatipule at about 7 p.m. on that day. They engaged two rooms in Mathura Lodge. Room No.5 was occupied by appellant Bajirao and his wife, while

Room No.3 was occupied by deceased Tanaji and his wife Mangal P.W.1.

3. In the morning of 29/5/1991 they went to Marleshwar for Deodarshan. Thereafter they returned to Hatkhamba at 7.30 p.m. They had dinner at Hatkhamba in Alankar Hotel where they met Namdeo, accused no.2. After the dinner they left for Ganpatipule. Thereafter they returned to the Lodge. Mangal and Bharati went to sleep while Bajirao and Tanaji went to drop Namdeo at his village, Hatkhamba. Between 12 to 12.30 that night Bajirao alone returned to the Lodge. P.W.3 Moreshwar opened the door of the Lodge. At about 4 a.m. Bajirao awoke P.W.1 Mangal and told her that there was an accident in which Namdeo was injured and, therefore, they had to go to Hatkhamba. Bajirao took Mangal and his wife Bharati in an autorickshaw and on the way to Hospital their rickshaw met with an accident at Hatkhamba in which all the three were injured and, therefore, they were taken to the Civil Hospital, Ratnagiri in a Truck. When Mangal was in the hospital she was informed that her husband was murdered.

4. In the morning of 30th May 1991 A.P.I. Juikar who was on duty in Ratnagiri Rural Police Station

received information that the dead body of a male was lying in injured condition between Ganpatipule and Ratnagiri. Therefore, he visited the spot and drew inquest panchanama Exh.32 and also spot panchanama Exh.37 in the presence of two panchas. Looking to the severe stab injuries on the dead body, he was of the view that it was a case of homicidal death. He, therefore, prepared his report Exh.47 and submitted the same to the police station, on the basis of which crime was registered. He visited Mathura Lodge on 31/5/1991 and seized the clothes and articles of accused Bajirao from Room No.5 and of Mangal and her husband from Room No.3 of the said Lodge under panchanama Exh.50. Autorickshaw was also seized under panchanama Exh.38. From the room no.5 which was in occupation of Bajirao and his wife Bharati blood stained clothes were recovered which were a banian and a pant. Bajirao was arrested on 4/6/1991. After his arrest, Bajirao expressed his willingness to produce the blood stained weapons which were hidden by him. His memorandum statement Exh.45 was recorded in the presence of panchas and thereafter the blood stained weapons were seized under recovery panchanama Exh.45-A. The blood stained clothes of the deceased as well as that of the accused Bajirao and the weapons were sent to the office of C.A. for examination. As

per the C.A. report blood of group "B" was found on the clothes of the deceased as well as of the appellant and the weapons. After the investigation was complete, charge-sheet was filed and the case was committed to the Sessions Court.

5. Before the Sessions Court, charges were framed for offence under Sections 302 read with Section 34 of IPC and for offences under Sections 201 and 120-B of IPC to which accused pleaded not guilty. On behalf of the prosecution 5 witnesses were examined. P.W. 1 is Mangal Ladgaonkar, the wife of deceased Tanaji. P.W.2 is Rajendra Shinde, the panch for the spot panchanama Exh.37 and seizure panchanama Exh.38. P.W.3 is Moreshwar Trivikram, the owner of Mathura Lodge. P.W. 4 is Vikas Patil, the panch for the recovery of weapons (articles 12 and 13). Lastly, P.W.5 is A.P.I. Gajanan Juikar who investigated the case. The defence of the accused was of denial and false implication. The defence of appellant was that after returning from Marleshwar he remained at the Lodge as he was tired and did not go to take Namdeo and Tanaji to Bus Stop. Thereafter Namdeo and Tanaji went away and he did not know what happened thereafter.

6. After considering the entire evidence on record, the trial court acquitted accused nos.2 and 3, as according to the trial court there was no evidence at all for the involvement of accused no.3 who was probably impleaded only because he was the owner of the autorickshaw. Accused no.2 was acquitted by the trial court because his presence was not deposed to by any witness except P.W.1 Mangal, the wife of deceased Tanaji. The appellant was convicted on the basis of circumstantial evidence. The said order of conviction and sentence is under challenge in this appeal.

7. The learned defence advocate contended that the circumstances on the basis of which appellant was convicted have not been fully established and, therefore, appellant is entitled for benefit of doubt. He also submitted that the motive is alleged only against Namdeo, accused no.2 who was acquitted and appellant had no reason to murder Tanaji.

8. The circumstances relied by the trial court basing the conviction of the appellant are as follows:-

. Firstly, there is evidence that appellant was last seen in the company of deceased Tanaji on the night of 29th May 1991. Thereafter he alone returned and the dead body of Tanaji was recovered from near the road between Ganpatipule and Ratnagiri. Secondly, there is recovery of blood stained clothes of appellant from room no.5 which was in the occupation of himself and his wife. Thirdly there is recovery of blood stained weapons at the instance of the appellant.

9. So far as the first circumstance is concerned, there is unshaken evidence of Mangal P.W.1, the wife of deceased Tanaji. She has deposed that they had halted in the Lodge of P.W.3 by name Mathura Lodge at Ganpatipule. At the time of taking dinner at Hatkhamba, Namdeo met them who also took dinner with them on the insistence of appellant Bajirao. Thereafter Bajirao and her husband Tanaji went to take Namdeo to his village Hatkhamba in the autorickshaw of Bajirao. At about 4 a.m. on that night appellant knocked the door and awoke her from sleep and told her that there was an accident in which Namdeo was injured

and, therefore, they will have to go to Hatkhamba. Accordingly, Mangal, appellant and his wife went in the autorickshaw. On the way there was an accident of their autorickshaw and, therefore, all of them were taken to Civil Hospital, Ratnagiri in a truck. Following morning she was informed about the murder of her husband. Her evidence is supported by P.W.3, the Lodge owner who has deposed that two rooms were hired by Bajirao for the two couples. Tanaji and his wife had occupied room no.3 and appellant and his wife had occupied room no.5. In the night he closes the door of the Lodge. He has deposed that on the night of 29/5/1991 visitors had left the Lodge in the morning and returned in the evening. That time both the couples had returned to the Lodge and took the keys and went to their rooms. After some time males went out side the Lodge. Some time between 11 and 12 in the midnight one Choughule returned to the Lodge. He opened the door and took him inside. At 4.30 a.m. Choughule came to the counter of the Lodge and though he told Choughule i.e. the appellant that temple did not open that early in the morning, he and the two ladies went out side the Lodge. Thereafter they did not return to the Lodge but police came and seized the articles from their rooms. Thus, the evidence of P.W.1 that in the night Tanaji had gone with appellant

and Namdeo and thereafter he did not return but she was informed about his murder next day while she was admitted to the hospital for her injuries suffered in the accident of autorickshaw. Her evidence about deceased leaving in the company of Bajirao has been sufficiently corroborated by independent witness like P.W.3 Moreshwar, the owner of the Lodge.

10. It is significant to note that after he returned to the Lodge the appellant took out the two ladies i.e. his wife Bharati and P.W.1 Mangal in an autorickshaw on the pretext that Namdeo was injured in an accident. There was an accident of that autorickshaw as a result of which all the three inmates of the autorickshaw were admitted to the Civil Hospital, Ratnagiri. The argument raised on behalf of the defence that there is discrepancy in the evidence of the two witnesses i.e. P.W.1 and P.W.3 in as much as P.W.1 stated that appellant had come back to the Lodge at 4 a.m. while P.W.3 stated that the appellant had come back to the Lodge at about 12 in that night. In our view there is absolutely no inconsistency or discrepancy in the two versions. Appellant had returned to the Lodge in the midnight. The door of the Lodge was closed and he could not have entered the

Lodge until P.W.3 opened the door. Thereafter he must have gone to his own room i.e. room no.5 where his wife Bharati was sleeping. He must have changed his clothes and thereafter planned to take Mangal out on the pretext that there was an accident of Namdeo. This is supported by the search and seizure of the clothes and articles from room no.5 under seizure panchanama Exh.50. The seizure panchanama mentions that the clothes and other articles were seized under the said panchanama from two different rooms. From room no.5, which was in occupation of the appellant and his wife, one blood stained banian and one blood stained pant was recovered. This shows that the appellant had gone to his room first for changing clothes and after taking his wife into confidence went to knock the door of Mangal at about 4 a.m. Thus, the prosecution has sufficiently proved that appellant was in the company of the deceased for the last time and thereafter appellant returned to the Lodge alone falsely telling Tanaji's wife that Tanaji met with an accident though he was murdered brutally causing 38 injuries most of which were incised wounds.

11. Giving of false information to deceased's wife that Tanaji met with an accident though he was murdered is an additional link in the chain of

circumstances against the appellant as held by the Supreme Court in a series of judgments. For example in the case of Alamgir Vs. State (NCT, Delhi) reported in **(2003) 1 SCC 21**, when husband on telephone told deceased wife's sister falsely that his wife died in a bus accident when she was murdered, it was held that false statement on telephone by the accused was a circumstance which went against the accused. Similarly in the case of Sahadevan Vs. State reported in **(2003) 1 SCC 534** false statement made to the witness by the accused that deceased had escaped from the police station when he was allowed to sleep in the verandah of the police station, though he was murdered, was held to be a circumstance against the accused in establishing his guilt.

12. The second circumstance relied by the prosecution against the appellant is the recovery of blood stained clothes from room no.5 which was in occupation of the appellant and his wife. As per seizure panchanama Exh.50 drawn on 31/5/1991 in respect of two rooms, i.e. room nos.3 and 5 in the Lodge, there was recovery of white dirty Banian i.e. "T" Shirt from room no.5 which was in occupation of the appellant. There were blood stains on the rear

side of the banian. There was also recovery of black coloured full pant which was having blood stains on the lower portion. Those articles were sent to C.A. and as per C.A. report Exh.40 both the clothes were found stained with blood of group "B". Same blood group was found on the clothes of the deceased as per C.A. report Exh.39. The trial court has observed that the blood group of appellant is "O" Rh + Ve.

13. The next circumstance against the appellant is the discovery of weapons at his instance. Appellant was arrested on 4/6/1991 and on the same day he showed his willingness to produce the weapons used in the offence. There was recovery of one Kukari and dagger, both of which were having blood stains thereon. As per C.A. report Exh.40 those two articles were stained with blood of group "B" which was also found on the clothes of the deceased. Those weapons were recovered at the instance of the appellant. They were hidden under the leaves in an orchard. Weapons were recovered from the place called "Shricha Donger" which is the place about 3 kms. from Malgund.

14. The prosecution has also placed on record the

post mortem notes which are at Exh.35. As per the said notes the deceased had 38 injuries on his person, out of which 33 were incised wounds and there were some penetrating wounds. The injuries were found on several parts of the body. The cause of death is given to be haemorrhagic shock due to multiple stab wounds. It cannot be doubted that those injuries could be caused or inflicted by weapons like Kukari and dagger (articles 12 and 13).

15. Thus, the aforesaid evidence sufficiently establishes that deceased Tanaji had received homicidal death on the night of 29/5/1991. There is reliable evidence to show that deceased had left on the night of 29/5/1991 in the company of appellant from Mathura Lodge and appellant alone had returned to the Lodge at 12 O’ clock in the night and thereafter dead body of Tanaji was found. The appellant was bound to explain the whereabouts of deceased but he had given false explanation about his accident though deceased was brutally murdered. False explanation given by the appellant to P.W.1 Mangal that her husband Tanaji met with an accident is yet another circumstance which supplies further link in chain of circumstances against the appellant as held by the

Supreme Court in the case of Alamgir vs. State (NCT, Delhi) and Sahadevan vs. State (Supra) referred to hereinabove. His defence taken in the trial court is also absolutely unreliable. The seizure of blood stained clothes from room no.5 which was in occupation of appellant is also a strong circumstance which points finger at the appellant. He has not explained the blood found on his clothes which was that of the deceased. Thirdly the recovery of blood stained weapons (articles 12 and 13) i.e. Kukari and dagger at the instance of appellant is also a circumstance which indicates the guilt of the appellant. The absence of motive against the appellant does not weaken any of the aforesaid circumstances which undoubtedly point to the guilt of the appellant. In the aforesaid circumstances we find no flaw in the judgment of the trial court.

16. In the result, the order of conviction and sentence recorded by the Addl. Sessions Judge, Ratnagiri on 5/12/1994 against the appellant in Sessions Case No.89 of 1991 is confirmed and the appeal is dismissed. The appellant is directed to surrender to his bail bond forthwith.

(S.S. Parkar, J.)

(Anoop V. Mohta,J.)